IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 1ST NOVEMBER 2007 / 10TH KARTHIKA 1929

Bail Appl..No. 6413 of 2007()

CRIME NO. 49/07 OF NENMARA POLICE STATION

PETITIONER:

M.L. KUMAR, S/O. K.K. NANU,
17 NEW TANK STREET, NUNGAMBAKKAM, CHENNAI,
TAMIL NADU-600 034.

BY ADV. SRI.M.AJAY

RESPONDENTS:

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1. THE STATE OF KERALA,
REPRESENTED BY ITS PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

2. THE STATION HOUSE OFFICER,
NENMARA POLICE STATION, PALAKKAD DISTRICT.

BY PUBLIC PROSECUTOR SRI. JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 01/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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B.A.No. 6413 of 2007

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Dated this the 1st day of November, 2007

O R D E R

Application for anticipatory bail. The petitioner is the 4th accused. He faces allegations in a crime registered for offences punishable, inter alia, under Section 468 I.P.C. I have already adverted to the facts in two bail applications, one for anticipatory and one for regular bail by the co-accused dt.12.9.2007 in B.A. 5494 of 2007 and dt. 25.9.2007 in B.A. 5674 of 2007.

2. The bank is the defacto complainant. Fraudulently amounts were siphoned out of the account of a non-resident account holder. The amounts so siphoned out runs to Rs. 1.2 Crores. The petitioner, who is the 4th accused, allegedly had a crucial and vital role to play in the conspiracy which was hatched. A Power of Attorney was executed before a Notary. The petitioner is said to be the person, who executed the

Power of Attorney. In such Power of Attorney he had impersonated as the account holder. It is using that Power of Attorney that amounts were withdrawn by the other accused. There is also an allegation that the petitioner had received substantial amounts as part of the booty. Investigation is in progress. The petitioner apprehends imminent arrest.

3. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. He has been arrayed as an accused unnecessarily after he refused to repay the amount which he had received from one of the other accused in his account along with interest. The offer of the petitioner that he shall repay the amount received by him without interest was not accepted by the bank His refusal to pay interest has prompted the defacto complainant/bank to raise reckless allegations against him. In these circumstances petitioner may be granted anticipatory bail, submits the learned counsel.

4. The learned Prosecutor opposes the application. He submits that the petitioner has to be arrested and interrogated. Proper interrogation and ascertainment of details from the petitioner is necessary. He may not be permitted to arm himself with an order of anticipatory bail, submits the Prosecutor.

5. Having considered all the relevant inputs, I find merit in the opposition by the learned Prosecutor. I shall refrain from a detailed discussion on merits about the acceptability of the allegations raised or the credibility of the data collected. Suffice it to say that the present allegations clearly show the contumacious role of the petitioner in bringing into existence the allegedly forged Deed of Power of Attorney. This, I am satisfied, is a fit case where the petitioner must resort to the ordinary and normal procedure of appearing before the Investigator or the learned Magistrate having jurisdiction and then seek regular bail in the ordinary course.

6. This application is accordingly dismissed. I may however hasten to observe that if the petitioner appears before the

learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass orders on merits, in accordance with law and expeditiously.

(R. BASANT)
Judge

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